



October 9, 2003

Suffolk County Planning Federation

The Suffolk County Planning Federation was formed in 1994 to provide training opportunities for municipal planning and zoning officials. Since its formation, the Federation has held numerous educational forums and has provided training to hundreds of local officials and citizens. The premise of the Federation is that through training, better, more effective planning can result.

The Federation was formed through the initiative of County Executive Robert Gaffney. It was his vision that the Federation would provide training opportunities to the 41 towns and villages of Suffolk County and also serve as a forum for the exchange of ideas and experiences among those officials. His vision has been realized with the tremendous growth of the Federation and its emergence as the preeminent training program in the county.

This resource manual is a supplement to the presentations provided at the seminar and can be used as a reference source. The New York State Department of State provides the majority of the information. The Suffolk County Water Authority and James F. Gesualdi, Esq provide additional articles.

The Suffolk County Department of Planning assembled the manual. Editing was provided by Carol Walsh, Principal Research Analyst.

Thank you for your commitment to good planning and for your interest in the future of your community.

Thomas A. Isles, A.I.C.P., Director
Suffolk County Planning Department

CONTENTS

Letter from the Suffolk County Planning Federation

Chapter 1: Introduction

Planning Basic Training: Land Use Management Courses for Planning and Zoning Boards
by the New York State Department of State

New York State Department of State: General Information

- Legislative Alert
- Voting Requirements for Zoning Boards of Appeals, Planning Boards, County Planning Boards & Regional Planning Boards
- CHAPTER 662 of the LAWS of 2002
- Department of State Publications Available on-Line at
<http://www.dos.state.ny.us/lgss/list9.html>

Planning Basic Training - Guest Lecturers, October 9, 2003

Chapter 2: Mandating Training for Zoning Board of Appeals and Planning Board Members: Sample Ordinances from Suffolk County Municipalities

Introduction

The Case for Planning and Zoning Board Training

Code of the Town of Brookhaven, New York, Chapter 85, Zoning, Article IIIA,
Training

Code of the Town of Huntington, New York, Part I, Administrative Legislation,
Chapter 2, Fair, Open and Accountable Government, Section 2-3. Training and
continuing education requirements.

Incorporated Village of Huntington Bay, Local Law No. 7 of the Year 2002,
Chapter 82: A local law to provide for required training for members of the Planning
Board and Zoning Board of Appeals.

Code of the Village of Port Jefferson, New York, Part II, General Legislation,
Chapter 250, Zoning, Article XIVA. Training

Chapter 3: Comprehensive Planning

Slide Show of the Comprehensive Planning presentation

Comprehensive Plan Statute - Village Law

Dept of State Legal Memorandum: "Defining a Community Through the Comprehensive
Plan"

Creating the Community You Want: Municipal Options for Land Use Control

Zoning and the Comprehensive Plan

Village of Cobleskill Comprehensive Plan

Chapter 4: SEQRA - ENVIRONMENTAL IMPACT STATEMENTS

Slide Show of SEQRA - Environmental Impact Statements Course

NYS DOS and NYS DEC, *SEQR Handbook: SEQR and Local Government*

Dept. of State Legal Memorandum: "SEQRA and the North Elba Walmart Decision"

The SEQRA Cookbook - Download address

6 NYCRR Part 617, State Environmental Quality Review - Download address

CONTENTS

Chapter 5: STORM WATER FOR ELECTED OFFICIALS

Slide Show of the Storm Water for Elected Officials presentation
Excerpt from SPDES General Permit
Chapter 80- Erosion and Sediment Control
North Elba Local Law No.3,2002

Chapter 6: SITE PLAN REVIEW & SPECIAL USE PERMITS

Slide Show of the Site Plan Review & Special Use Permits presentation
Dept of State Legal Memorandum: "Can Local Boards Regulate the Hours of Operation of a Business?"
Town of Mt Morris Local Law No. 1,1997
Village of Sands Point Local Law No. 2, 1996
Site Development Plan Review Procedure and Guidelines
Checklist for Site Plan Review

Chapter 7: SELECTING A MUNICIPAL PLANNING CONSULTANT

Slide Show of the Selecting a Municipal Planning Consultant presentation
Town of Onondaga Local Law No. 1, 1992
Opinion of the Committee on Open Government Numbers 1320 and 2850
Opinion of the State Comptroller Number 97-25
Office of the State Comptroller Financial Management Guide, subsection 8.3020 page 5 and 9
Excerpt from *Selection and Use of Engineers, Architects and Professional Consultants, Guidelines for Public Agencies* American Public Works Association.
Excerpt from PAS Report #378, Evaluation Forms.

Chapter 8: PLANNING & ZONING CASE LAW UPDATE

Legislative and Caselaw Update

Chapter 9: SMART GROWTH FOR CLEAN WATER

Excerpts from *Smart Growth for Clean Water: Helping Communities Address the Water Quality Impacts of Sprawl*
Incorporating Smart Growth into the Development Process

PLANNING BASIC TRAINING:

LAND USE MANAGEMENT COURSES FOR PLANNING AND ZONING BOARDS BY THE NYS DEPARTMENT OF STATE

Welcome to this training program sponsored by the Suffolk County Planning Federation. Instruction will be provided by planning and legal staff of the New York State Department of State (DOS). Local experts will supplement the program, resulting in one of the most comprehensive training programs ever offered on Long Island. This year's program is located at the Holiday Inn, Ronkonkoma, New York.

The program will include a presentation by Thomas Hylton, a Pulitzer Prize-winning journalist and author of ***Save Our Land, Save Our Towns***. Mr. Hylton will discuss ways to save our farms and open space by rediscovering our traditional villages and hamlets.

Following the introduction, the seminar courses will be presented in two sessions. The first session will encompass the practical and legal reasons for adopting a comprehensive plan, information on the implementation of local storm water control programs as well as SEQRA scoping and environmental impact statement review. The second session will provide participants with a choice of three topics: Site Plan Review and Special Use Permits; Selecting a Municipal Planning Consultant; and, Planning and Zoning Case Law.

Some of the courses qualify for continuing education credits for Code Enforcement Officers (CEO), AICP Continuing Professional Development and Continuing Legal Education (CLE) Professional Practice for Attorneys.

Participation in the program is recommended for planning and zoning board members, town and village board members, staff to the boards, consulting firms as well as civic and community representatives. A Suffolk County Planning Federation certificate of completion will be sent to all seminar attendees.

The program will include the following New York State Department of State Local Government and Land Use Management courses. The course content is intended to familiarize board members with procedures that must be followed, applicable state statutes, general design concepts, and the context in which local decision making occurs. More experienced board members may want to treat these basic courses as *refresher courses* and as a way to confirm their working knowledge of recent changes to the state land use statutes. Both new and experienced board members and other local government officials will benefit from attending sessions that allow a more in-depth treatment of basic planning tools.

Comprehensive Plan (1a., 1b., 1c.)

- The practical & legal reasons for adopting a comprehensive plan.
- The importance of involving the public in the plan development.
- Steps leading to the adoption of a comprehensive plan.
- Plan contents and sources of information.
- An explanation of the comprehensive plan statutes.

PLANNING BASIC TRAINING:

LAND USE MANAGEMENT COURSES FOR PLANNING AND ZONING BOARDS BY THE NYS DEPARTMENT OF STATE

Storm Water Control for Local Officials

- Information on implementing local storm water control programs.
- Identification of local and regional sources of technical assistance.
- Review of regulatory mechanisms, including basic land use tools.
- Comprehensive planning to identify critical development areas.
- Long-term implications: on-going costs; maintenance; enforcement.

SEQRA - Scoping and Environmental Impact Statement Review (1b.)

- Participants will be led through the scoping process and the evaluation of the Draft Environmental Impact Statement.
- Emphasis on the preparation of a scoping document which is designed to become an outline for the preparation of the DEIS, including practical suggestions and practitioner's tips.
- Practical suggestions for the preparation of the DEIS, determining the adequacy of the DEIS, and filing notice requirements.
- This course is designed for professional and lay planners that have a working knowledge of SEQRA.

Site Plan Review and Special Use Permits (1a., 1b., 1c.)

- The legal construction of site plan review & special use permit local laws.
- The scope and content of a proper "site plan".
- Special use permits and their status as a zoning tool.
- Analysis of development proposals in terms of their design impacts on municipal facilities, services and neighborhood character.

Selecting a Municipal Planning Consultant (1b.- 1.5 hrs.)

- A discussion centered on the process and requirements that municipalities should adhere to when hiring municipal consultants. Particular discussion centers upon the concept of "Professional Services" pursuant to procurement practices, what types of services must be bid and which ones do not require bidding as outlined in the General Municipal Law, Article 5A, §103 and 104-b. The preparation of RFP's and RFQ's. Consultant interviews and Open Meeting Law requirements.

Planning and Zoning Case Law (1a., 1b., 1c.)

- The latest developments in state & federal courts in the area of land use.
- Judicial trends in decision making.
- How judicial decisions in other parts of the state impact local planning boards, zoning boards of appeals, and governing bodies.
- A discussion of recent Attorney General Opinions, Comptroller Opinions, and Opinions of the Committee on Open Government, which effect local land use planning and administration.

(1) Completion of this course provides the following continuing education credits:

a. Code Enforcement Officers: 1 hour of In-Service Credit from the Office of Fire Prevention & Control

b. Attorneys: 1 hour of Continuing Legal Education - Professional Practice

c. American Institute of Certified Planners: 1 hour of Continuing Professional Development Program

PLANNING BASIC TRAINING:

LAND USE MANAGEMENT COURSES FOR PLANNING AND ZONING BOARDS BY THE NYS DEPARTMENT OF STATE

Thanks to the sponsors below, there is no fee for this seminar.

Suffolk County Planning Federation - Formed in 1994 by County Executive Robert J. Gaffney, the Suffolk County Planning Federation was organized to provide training opportunities for county and local planning officials. Funding for the Federation has been provided by the Suffolk County Legislature.

New York State Department of State - The NYS Department of State provides training to municipal officials who are seeking basic information about local government powers and duties in relation to the land use review and approval process. Basic land use management training courses are offered for planning board and zoning board of appeals members, elected officials, and zoning enforcement officers.

The American Planning Association - The American Planning Association is a nationwide professional, public interest and research organization representing over 30,000 planners, elected and appointed officials and citizens concerned with planning and development. The Long Island Section of the Metro Chapter of the APA is the local contact for this program.

<p>Suffolk County Water Authority Wendy's James F. Gesualdi, Esq. Vollmuth & Brush Nelson & Pope First Development Corporation Montauk Properties Bartlett, Amoruso & Recce - Architects, P.C.</p>
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PLANNING BASIC TRAINING:

LAND USE MANAGEMENT COURSES FOR PLANNING AND ZONING BOARDS BY THE NYS DEPARTMENT OF STATE

Legislative Alert

This information is provided to keep local governments better informed about changes in state statutes. Information about each new law (or chapter) is provided, including the chapter number, when the law was signed, its effective date, and the text of the new or revised statute. In the text of the statute, words in brackets are to be deleted and words in all-capitals are to be added.

Chapter 662 of the Laws of 2002

Voting Requirements for Zoning Boards of Appeals, Planning Boards,
County Planning Boards & Regional Planning Councils

On July 1, 2003, a new law took effect that applies to city, town and village planning boards and zoning boards of appeals, and also county planning boards and regional planning councils. The law establishes special voting requirements, and in the case of zoning boards of appeals acting in their appellate capacity, it codifies a default denial established by the Court of Appeals in *Tall Trees Construction Corp. v. Zoning Board of Appeals of the Town of Huntington*.

Chapter 212 of the Laws of 2003

Participation by County and Regional Planning Board Members in Votes

Effective July 1, 2004, officials of a municipal board or body who are also members of a regional or county planning board, may participate in deliberations and votes of the regional or county planning board unless the matter has been the subject of a proposal, application or vote before the municipal board or body on which they serve.

Chapter 213 of the Laws of 2003

Planned Unit Development Districts

Effective July 1, 2004, the statutes will contain express authority and guidance for cities, towns and villages that wish to establish planned unit development districts and review of planned unit development plans.

Chapter 296 of the Laws of 2003

Notification of Municipalities When Constitutionality of Local Law is Challenged

As of January 1, 2005, a local government which is not a party to an action or proceeding which challenges a local law, ordinance rule or regulation of that local government must be given notice of the proceeding by the party raising the question of constitutionality. Also requires the party raising the issue of constitutionality to provide to the Attorney General.

[[NYS Department of State Home Page](#)] [[Local Government Services Menu](#)]

Voting Requirements for Zoning Boards of Appeals, Planning Boards, County Planning Boards & Regional Planning Councils

On July 1, 2003, a new law took effect that applies to city, town and village planning boards and zoning boards of appeals, and also county planning boards and regional planning councils. Chapter 662 of the Laws of 2002 establishes special voting requirements, and in the case of zoning boards of appeals acting in their appellate capacity, it codifies a default denial established by the Court of Appeals in Tall Trees Construction Corp. v. Zoning Board of Appeals of the Town of Huntington.¹ The provisions of the law are discussed below.

PLANNING BOARDS

The statutes governing the general powers and duties of planning boards are contained in Town Law §271, Village Law §7-718, and General City Law §27. A new paragraph was added to these statutes which specifies the number of members of the planning board which must agree on a motion in order for the board to take action. The paragraph says,

“Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.”

By state statute, a planning board may consist of five (5) or seven (7) members. The number of members is established by the city council, town board or village board of trustees when the planning board is established.

When a board member proposes to act on an application, the motion made should not be of the “either/or” variety, but should be to take a specific action. For example, “I move that the planning board approve Mr. Smith’s application for site plan approval.” The board members then vote for or against the motion, or in some cases abstain from voting. Even though a vote has been taken, the board has not taken “action” unless the motion receives an affirmative vote of a majority of all the members of the board. That means that on a five-member board, at least three members must vote in favor of the motion; and on a seven-member board at least four members must vote in favor of a motion. These numbers, which constitute a majority, stay the same even if board members are absent, have a conflict of interest, abstain, or if there are vacancies on the board.

If the required number of favorable votes is not obtained, the motion fails and action has **not** been taken. The board may then consider other motions. In this example, the motion could be to deny Mr. Smith’s application. Alternatively, the board may further discuss the issue and a motion may be made to approve the application provided certain modifications are made to the application or certain conditions will be fulfilled.

Planning boards should be especially cognizant of voting requirements when reviewing a **subdivision** application, because failure of the board to take action on a preliminary or final plat within the time prescribed by law enables an applicant to obtain a certificate of approval from the municipal clerk.²

Some applications the planning board reviews must be referred to the county planning agency for their review and recommendation.³ For a town, village, or city planning board to approve an application when the county planning agency recommends disapproval, or to approve the application without making the

modifications suggested by the county planning agency, the local planning board would need a majority plus one vote to override the county. That means that on a five-member board, at least four members would have to vote in favor of the motion; and on a seven-member board at least five members would have to vote in favor of the motion.

ZONING BOARD OF APPEALS

The statutes governing the general powers and duties of zoning boards of appeals are contained in Town Law §267-a, Village Law §7-712-a, and General City Law §81-a. A new paragraph was added to these statutes which specifies the number of members of the zoning board of appeals which must agree on a motion in order for the board to take action. The paragraph says,

“Voting requirements . . . [E]very motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.”

By state statute, a zoning board of appeals may consist of three (3) or five (5) members. The number of members is established by the city council, town board or village board of trustees when the zoning board is established. When a board member proposes to act on the application, the motion made should not be of the “either/or” variety, but should be to take a specific action. For example, “I move that the zoning board of appeals deny Mrs. Smith’s application for a use variance.” The board members then vote for or against the motion, or in some cases abstain from voting. Even though a vote has been taken, the board has not taken “action” unless the motion receives the affirmative vote of a majority of all the members of the board. That means that on a three-member board, at least two members must vote in favor of the motion; and on a five-member board at least three members must vote in favor of a motion. These numbers, which constitute a majority, stay the same even if board members are absent, have a conflict of interest, abstain, or if there are vacancies on the board.

If the required number of votes in favor of the motion is not obtained, the result of the vote will depend on what type of jurisdiction the zoning board is exercising. zoning board of appeals have two types of jurisdiction. ‘Appellate jurisdiction’ of the zoning board of appeals is to hear and decide appeals of any order, requirement, decision, interpretation, or determination made by an administrative official [e.g., the building inspector or enforcement officer] charged with enforcement of ordinances or local laws adopted pursuant to the zoning enabling statutes.⁴ Appellate jurisdiction includes applications for use and area variances and applications challenging an enforcement officer’s interpretation or application of the zoning regulations. The non-appellate or ‘original jurisdiction’ of zoning board of appeals refers to the jurisdiction of the zoning board of appeals to hear and decide other types of matters, as delegated by the governing board, such as special use permits or site plan applications.⁵

If the board is exercising its ‘original jurisdiction,’ the motion fails and action has **not** been taken. The zoning board of appeals can then discuss the matter further and take another vote.

When the board is exercising its ‘appellate jurisdiction,’ different results may occur. If a zoning board of appeals member makes a motion to grant a use variance, such as “I move we approve Mrs. Smith’s application for a use variance,” and the motion fails to get an affirmative vote of the majority in favor of the motion, then the application for an appeal is denied. The statutes refer to this as a ‘default denial.’ The new language is,

“Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied.”

The statute is silent as to what the effect is of a failed motion to *deny* an appeal (i.e., a motion to deny a variance or to uphold an enforcement officer’s decision). There is no default *approval* in this situation. Arguably, a failed motion to deny the appeal would simply result in *no* action. Practically, if this occurs, the zoning board members should discuss the matter further and make another motion, possibly to approve the application for an appeal.

Some applications the zoning board of appeals reviews must be referred to the county planning agency for their review and recommendation.⁶ For a town, village or city zoning board of appeals to approve an application when the county planning agency recommends disapproval, or to approve the application without making the modifications suggested by the county planning agency, the local zoning board of appeals would need a majority plus one vote to override the county. That means that on a three-member board, all three members would have to vote in favor of the motion; and on a five-member board at least four members would have to vote in favor of the motion.

Many zoning boards of appeals have found that the first motion they vote on doesn’t always pass, but it is not necessarily because members want to deny the application. It may be because some of the members feel they need more information and are not prepared to make a decision, or because some members feel that stronger conditions need to be placed on an approval. To address these situations, the new default denial provision in the statutes, which are applicable to the zoning board of appeals acting in their appellate capacity, state,

“The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.”

This provision allows the board to take additional votes on the application for an appeal within the statutory time frame, which requires a board decision within sixty-two (62) days after the close of the public hearing. Without this new provision a second vote on the appeal would only be allowed if the board followed the rehearing procedures.⁷

What remains unclear is how subsequent votes, within the time allowed, will affect Article 78 proceedings. Article 78 proceedings must be commenced within thirty days after the filing of a decision of the board in the office of the municipal clerk. To preserve his or her right to appeal, an applicant may arguably need to commence proceedings within 30 days of the time that the decision on the first failed motion is filed in the office of the municipal clerk, even if the board indicates that it will reconsider its vote within the 62-day time frame.

COUNTY PLANNING BOARDS

The statutes governing the general powers and duties of county planning boards are contained in General Municipal Law §239-c. A new paragraph places in statute the number of members of the county planning board which must agree on a motion in order for the board to take action. The paragraph says,

“Voting requirements. Every motion or resolution of a county planning board shall require for its adoption the affirmative vote of a majority of all the members of the county planning board.”

The number of members on the county planning board is established by the county legislative body. For the board to pass a motion, the motion would need to receive the affirmative vote of a majority of all the members of the board. That means that on a fifteen-member board, at least eight members must vote in favor of the motion. These numbers stay the same even if board members are absent, have a conflict of interest, abstain, or if there are vacancies on the board.

REGIONAL PLANNING COUNCILS

The statutes governing the general powers and duties of regional planning councils are contained in General Municipal Law §239-h. A new paragraph places in statute the number of members of the regional planning council which must agree on a motion in order for the council to take action. The paragraph says,

Voting requirements. Every motion or resolution of a regional planning council shall require for its adoption the affirmative vote of a majority of all the members of the regional planning council.

The number of members on the regional planning council is established by the collaborating legislative bodies. For the council to pass a motion, the motion would need to receive the affirmative vote of a majority of all the members of the council. That means that on a twenty-five-member council, at least thirteen members must vote in favor of the motion. These numbers stay the same even if council members are absent, have a conflict of interest, abstain, or if there are vacancies on the council.

CONCLUSION

It is critical for planning and zoning boards to understand the new voting requirements as the new rules effect the validity of all board actions. Accordingly, please share this information with your local board members, as well as with your municipal attorney and enforcement officials.

¹ 97 N.Y.2d 86 (2001); www.courts.state.ny.us/ctapps/decisions/151opn.pdf.

² See Town Law §276 (8), Village Law §7-728 (8), or General City Law §32 (8) for further details.

³ See General Municipal Law §239-m.

⁴ These statutes are contained in Article 16 of the Town Law, Article 7 of the Village Law or Article 5A of the General City Law.

⁵ See Town Law §267-a(4), Village Law §7-712.a(4), and General City Law §81-a(4).

⁶ See General Municipal Law §239-m.

⁷ See Town Law §267-a (12), Village Law §7-712-a (12), and General City Law §81-a (12) for a discussion of the number of votes needed in order to rehear an application.

CHAPTER 662 of the LAWS of 2002

Approved December 3, 2002
Effective July 1, 2003

AN ACT to amend the general city law, the town law, the village law and the general municipal law, in relation to requiring an affirmative vote of a majority of all members of a planning board, zoning board of appeals, county planning board or regional planning council in order to take action, and to provide for a default denial by the zoning board of appeals where it fails to pass a motion overruling a decision of the enforcement officer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section 27 of the general city law is amended by adding a new subdivision 17 to read as follows:

17. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

§ 2. Section 271 of the town law is amended by adding a new subdivision 16 to read as follows:

16. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

§ 3. Section 7-718 of the village law is amended by adding a new subdivision 17 to read as follows:

17. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

§ 4. Section 239-c of the general municipal law is amended by adding a new subdivision 5 to read as follows:

5. Voting requirements. Every motion or resolution of a county planning board shall require for its adoption the affirmative vote of a majority of all the members of the county planning board.

§ 5. Section 239-h of the general municipal law is amended by adding a new subdivision 6 to read as follows:

6. Voting requirements. Every motion or resolution of a regional planning council shall require for its adoption the affirmative vote of a majority of all the members of the regional planning council.

§ 6. Subdivision 4 of section 81-a of the general city law, as added by chapter 208 of the laws of 1993, is amended and a new subdivision 13 is added to read as follows:

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any

order, requirement, decision, interpretation, or determination, made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. ~~The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance.~~ Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the city.

13. Voting requirements.

(a) Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

(b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

§ 7. Subdivision 4 of section 267-a of the town law, as amended by chapter 248 of the laws of 1992, is amended and a new subdivision 13 is added to read as follows:

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. ~~The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance.~~ Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

13. Voting requirements.

(a) Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

(b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

§ 8. Subdivision 4 of section 7-712-a of the village law, as amended by chapter 248 of the laws of 1992, is amended and a new subdivision 13 is added to read as follows:

4. Hearing appeals. Unless otherwise provided by local law, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any local law adopted pursuant to this article. ~~The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or~~

~~determination of any such administrative official, or to grant a use variance or area variance.~~ Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the village.

13. Voting requirements.

(a) Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

(b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

§ 9. This act shall take effect on the first day of July next succeeding the date on which it shall have become a law.

Department of State 8/03

Several publications are now available in electronic form as indicated in the list below. All other publications may be obtained by calling the Division of Local Government directly, by fax, e-mail or by written request addressed to the following:

**NYS Department of State
Division of Local Government
41 State Street
Albany, NY 12231-0001**

Telephone: (518) 473-3355
Fax: (518) 474-6572
E-mail: localgov@dos.state.ny.us

NOTE: There is no charge for information. Please be advised that items ordered may be in limited supply.

Local Government Handbook

The *Local Government Handbook* is an authoritative source of information about the origins and operations of the Empire State, including a brief history and overview of federal, state, and local government and describing their evolving relationships, structures, and functions.

[Download Local Government Handbook](#) (1,504KB PDF file) (257 pgs)

Legal Memoranda

The Department of State Counsel's Office has produced legal memorandum on a variety of issues. They are divided into two categories, "Land Use and Zoning" and Local Government."

[Legal Memoranda](#)

SEQR Handbook: SEQR and Local Government

The Department of Environmental Conservation (DEC) is working to update the State Environmental Quality Review (SEQR) handbook. It is a popular reference book for state, county and local government officials; environmental consultants; attorneys; permit applicants; and the public at large. Presented here for review and comment is a chapter which examines the general applicability of SEQR to local governments. It discusses how SEQRA relates to land use decisions, Local Government Capital Improvements, Municipal Annexations, and Municipal Development Incentives.

[SEQR Handbook: SEQR and Local Government](#)

Land Use Technical Series

Local Open Space Planning Guide- Revised 7/03

The Open Space Planning Guide is a collaborative project of the Departments of State and Environmental Conservation. It has been written to assist those citizens and local officials who want help and advice to conduct local open space planning. It sets forth a simple, step-by-step process for preparing a local open space conservation plan; recommends specific strategies and techniques for conserving open space; and includes useful sources of information.

[Download Local Open Space Planning Guide](#) (1133KB PDF file) (69 Pgs)

[Guide to Planning and Zoning Laws of New York State](#) **Revised 1/03**



This essential publication is for municipal officials, attorneys, and planning boards. It has the complete text of relevant laws, including statutory changes from the 2002 Legislative Session.

[Download Guide to Planning and Zoning Laws](#) (794KB PDF file) (146 pgs)

Adopting Zoning for the First Time

Explains the procedure for establishing a municipality's first zoning regulations, from the creation of a zoning commission to the publication of a summary of the zoning ordinance or filing of the zoning law with the Secretary of State.

[Download Adopting Zoning](#) (143KB PDF file) (26 pgs)

Creating the Community You Want: Municipal Options for Land Use Control

Summarizes the various land use management tools which New York State municipalities can use to help deal with issues of community character and change.

[Download Municipal Options](#) (328KB PDF file) (27 pgs)

Governmental Immunity from Zoning

This monograph presents the nine factors which must be examined to determine whether it is in the public interest to subject a particular action of a governmental unit to local land use regulations.

[Download Governmental Immunity from Zoning](#) (102KB PDF file) (3 pgs)

Guidelines for Applicants to the Zoning Board of Appeals

This document explains the rules and standards under which appeals may be taken to the Zoning Board of Appeals (ZBA) and decisions made by the ZBA.

[Download Guidelines for Applicants to the Zoning Board of Appeals](#) (88KB PDF file) (5 pgs)

Legal Aspects of Municipal Historic Preservation

This publication provides an overview of municipal regulatory authority under state and federal status to preserve local historic resources.

[Download Historic Preservation Handbook](#) (12,935KB PDF file) (16 pgs)

Local Laws and Agricultural Districts: How Do They Relate?

This document provides guidance to municipalities in the preparation of local laws or ordinances so that they do not impact farming activities that are conducted within agricultural districts established pursuant to Article 25-AA of the Agriculture and Markets Law.

[Download Local Laws and Agricultural Districts](#) (60KB PDF file) (9 pgs)

Municipal Regulation of Mobile Homes

This document provides an overview of municipal authority to regulate the placement of mobile (manufactured) homes.

[Download Municipal Regulation of Mobile Homes](#) (630KB PDF file) (21 pgs)

Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities New

This publication provides guidance to municipalities on how to handle applications for wireless communications facilities. It explains how wireless (cellular) communications works, reviews guidelines established by the 1996 Federal Telecommunications Act, gives environmental and design review tips, and provides model local laws that your community can adapt for its particular situation. This publication was produced by the Town of Pittsford under a grant administered by the Department of State.

[Download Planning and Design Manual](#) (2,312KB PDF file) (64 pgs)

Record Keeping Tips for Zoning Administration

Tips on managing zoning-related paperwork. Model review procedure forms are provided. Published in cooperation with the Tug Hill Commission.

[Download Record Keeping Tips](#) (33KB PDF file) (11 pgs)

Site Development Plan Review Procedure and Guidelines

Discusses submission requirements, review standards and development considerations. Includes section 274 (a) of Town Law, illustrative plan regulations, sample application and design review methodology.

[Download Site Development Plan Review Procedure and Guidelines](#) (282KB PDF file) (35 pgs)

Zoning Board of Appeals

This booklet gives the legal framework for understanding the powers and duties of the Zoning Board of Appeals. Includes new statutory changes effective July 1, 1994.

[Download Zoning Board of Appeals](#) (158KB PDF file) (28 pgs)

Zoning and the Comprehensive Plan

This document explains the legal relationship between the comprehensive plan and municipal zoning regulations.

[Download Zoning and the Comprehensive Plan](#) (163KB PDF file) (17 pgs)

Zoning Enforcement for Towns and Villages

The zoning enforcement process, including options for enforcement and sample forms. Published in cooperation with the Tug Hill Commission and others.

[Download Zoning Enforcement](#) (103KB PDF file) (32 pgs)

Local Laws and Charters



Adopting Local Laws

Plain language, step-by-step requirements to draft and adopt a local law. Provides useful information on the scope of the home-rule power. Valuable for the municipal clerk and attorney.

[Download Adopting Local Laws](#) (143KB PDF file) (27 pages)

Land Use Moratoria

"Land Use Moratoria" temporarily suspend development approvals. This document describes moratoria, the case law surrounding moratoria, and the drafting of a moratoria law.

[Download Land Use Moratoria](#) (79KB PDF file) (15 pgs)

Revising City Charters

Describes in detail the legal methods and requirements of revising a city charter, and provides statistical data and technical guidance for charter committee members and staff.

[Download Revising City Charters](#) (100KB PDF file) (21 pgs)



Local Government Cooperation

The Consolidation of Local Government

Assesses the service and financial implications of the Village of Fillmore dissolution into the Town of Hume. Prepared by Eric Bridges, Community Advisor for the Southern Tier West Regional Planning and Development Board.

[Download the Consolidation of Local Government](#) (59KB PDF file) (19 pgs)

Consolidation for Towns and Villages

Addresses considerations that relate to town and village consolidation, including a cost savings checklist and steps for consolidation.

[Download Consolidation for Towns and Villages](#) (33KB PDF file) (8 pgs)

Implications of a Village Dissolution

Assesses the financial feasibility of dissolving the Village of Cherry Creek into the Town of Cherry Creek. Prepared by Eric Bridges, Community Advisor for the Southern Tier West Regional Planning and Development Board.

[Download Implications of a Village Dissolution](#) (71KB PDF file) (23 pgs)

Intergovernmental Cooperation

Provides practical suggestions, ideas and information.

[Download Intergovernmental Cooperation](#) (72KB PDF file) (15 pgs)

Municipal Service Alternatives: Villages of Carthage and West Carthage, New York

Examines the range of alternatives for the two villages as they consider the delivery of services to their residents. Services considered include general administration, fire, police, highway, housing, water and wastewater, planning and zoning, building code, recreation, and economic development. Posted in cooperation with the Tug Hill Commission. (*Only available as an electronic document.*)

[Download Municipal Service Alternatives](#) (475KB PDF file) (190 pgs)

Village Dissolution

Serves as a guide for those who wish to determine and assess the management and legal implications of village dissolution.

[Download Village Dissolution](#) (116KB PDF file) (19 pgs)

General Local Government Information



Administration and Enforcement of the Uniform Fire Prevention and Building Code

Summarizes state and local government responsibilities relating to the New York State Uniform Fire Prevention and Building Code.

[Download Administration and Enforcement of Uniform Fire Prevention and Building Code](#) (72KB PDF file) (21 pgs)

Conducting Public Meetings and Public Hearings

A review of the procedures governing public meetings and hearings. Published in cooperation with the Tug Hill Commission.

[Download Conducting Public Meetings and Hearings](#) (70KB PDF file) (21 pgs)

Your Right To Know: New York State's Open Government Laws

Produced by the Committee on Open Government, this publication provides information about the Freedom of Information Law and Open Meetings Law. Includes sample letters.

[Your Right To Know: New York State's Open Government Laws](#)

Thomas Hylton

Thomas Hylton, a Pulitzer Prize-winning journalist, is author of a color coffee table book called *Save Our Land, Save Our Towns*, first published in 1995. *Save Our Land* is a plea for comprehensive planning to save our cities, towns, and countryside. Hylton is also host of an hour-long public television documentary called *Save Our Land, Save Our Towns*. The program was first broadcast on Pennsylvania PBS stations in 2000 and has aired on more than 100 PBS stations nationwide.

As president of Save Our Land, Save Our Towns Inc., a non profit corporation, Hylton serves as an advocate of traditional towns that house people of all ages, races, and incomes. Since publication of the book, Hylton has given 300 presentations in Pennsylvania and 26 other states on land use planning and community building. He addressed the nation's governors at the winter 2001 conference of the National Governors' Association. He has given talks to legislators sponsored by both the Democratic and Republican caucuses of the Pennsylvania House and Senate. His book was distributed to every legislator and 500 other state and local officials by James Seif, Pennsylvania Secretary of Environmental Protection. Hylton is an organizing member of *10,000 Friends of Pennsylvania*, a coalition of civic groups dedicated to land use reforms and community building in Pennsylvania.

A three-time winner of the American Planning Association's annual journalism award, Hylton received a fellowship from the Society of Professional Journalists in 1993 to study state planning issues. His book is based on that research.

A native of Wyomissing, Pennsylvania, Hylton has lived all his life in Pennsylvania cities and towns. Since 1973, Hylton has lived in Pottstown with his wife, Frances, an elementary school teacher in the Pottstown School District. For 22 years, he wrote for Pottstown's daily newspaper, *The Mercury*. His editorials advocating the preservation of farmland and open space in southeastern Pennsylvania won a Pulitzer Prize in 1990.

Hylton conceived and organized Trees Inc., a non-profit corporation that raised nearly \$500,000 to plant and maintain street trees in Pottstown. He co-founded Preservation Pottstown, an organization dedicated to preserving Pottstown's historic neighborhoods and enhancing the borough's quality of life. He helped bring about the integration of Pottstown's elementary schools through a special edition of *The Mercury* advocating the cause.

Hylton is chairman of the Pottstown Planning Commission and the Pottstown Shade Tree Commission. He is currently writing an innovative, "reader-friendly" zoning ordinance for Pottstown with a grant from the William Penn Foundation.

<http://www.saveourlandsaveourtowns.org/index.html>

PLANNING BASIC TRAINING - GUEST LECTURERS

Andrew P. Freleng, AICP

Andy is a principal planner at the Suffolk County Department of Planning; Vice Chair of the Central Pine Barrens Credit Clearinghouse; Member of the Board of Directors of the New York Planning Federation; and Director of the American Planning Association, Long Island Section. Prior to coming to Suffolk County Planning, Andy was Chief Planner for the Town of Southampton and prior to that, Chief Environmental Planner for H2M Group (an engineering, architecture, community development and planning firm). In 1999 Andy was elected to the Board of Trustees of the Incorporated Village of Port Jefferson and served until 2003. Prior to that he served three years on the Port Jefferson Planning Board. As Trustee Andy was responsible for the Conservation Advisory Council, advisor to the Board of Trustees on matters such as SEQRA, water front and storm water issues. Andy sponsored several Zoning Code amendments including mandatory training for Planning and Zoning Board members. Andy holds a BS degree in environmental science from Long Island University, Southampton College and did his Graduate work in environmental management at C. W. Post (LIU).

James F. Gesualdi, AICP, Esq.

James F. Gesualdi, Esq., is a sole practitioner in Islip, New York. Mr. Gesualdi's practice is concentrated on land-use, planning, zoning and animal welfare matters. He earned his B.A. degree from St. Lawrence University where he graduated *magna cum laude*, Phi Beta Kappa, with highest honors in Government; his M.A. in Political Science (Public Affairs) from the State University of New York at Stony Brook; and his J.D. degree from the Hofstra University School of Law from which he graduated with Distinction and where he served as a Notes and Comments Editor of the Law Review. Mr. Gesualdi has represented property owners, developers, citizens groups, and municipalities in a variety of high profile land use and environmental matters, including subdivisions, site plans, special permits, variances and zone changes. He has long been actively involved in the Long Island planning community, having worked in the Town of Islip Planning Department, served on the APA LI Chapter Steering Committee, and as a frequent panelist in APA and Suffolk County Planning Federation training programs for planning and zoning officials. In addition, he has served as Village Attorney to the Incorporated Villages of Huntington Bay and Head-of-the-Harbor, and as the Village Attorney to the Incorporated Village of Nissequoque Planning Board. He has also served as special counsel to the Towns of Brookhaven, Riverhead and Southold on land use and environmental review matters, including smart growth initiatives.

Lori Heithoff, AICP

Lori Heithoff is the Department of State Land Use Training Manager, responsible for developing the training program offered to local planning and zoning officials, as well as presenting the training programs. In addition, she serves as the point of first referral for those individuals throughout the state requesting technical assistance on planning and zoning issues. Prior to joining the Department of State, she provided staff support for the update and recodification of New York State's Land Use Laws. Mrs. Heithoff holds a Masters in Urban & Regional Planning and a Bachelor of Arts in Political Science, both from the State University of New York at Albany where she was elected to Phi Beta Kappa. She is also a member of the American Institute of Certified Planners.

Stephen M. Jones, AICP

Stephen M. Jones was appointed Chief Executive Officer of the Suffolk County Water Authority in December 2000. The Water Authority currently operates the largest public water supply in the US fed exclusively from groundwater, delivering the highest quality water at the lowest possible price. Prior to his appointment as CEO, Mr. Jones served for seven years as the Suffolk County Planning Director; for ten years in the private sector as Vice-President of the New York Institute of Technology; and for ten years in local government as Islip Commissioner of Planning and Development. His past community and government activities include serving as Chairman of the Suffolk County Planning Commission, and President of the Suffolk County Historical Society. He is currently serving on the boards of Sustainable Long Island and the Long Island Maritime Museum. Mr. Jones is a professional planner by training and experience and holds a Bachelors degree in Geology and a Masters degree in Urban Studies.

PLANNING BASIC TRAINING - GUEST LECTURERS

John J. Pascucci, P.E., DEE

Education: Bachelor of Engineering, Stevens Institute of Technology, 1971

Masters of Engineering, New York University, 1975

Certification: Diplomate, American Academy of Environmental Engineers

Mr. Pascucci is a Senior Project Manager at Cameron Engineering & Associates, LLP, of Syosset, NY, responsible for projects associated with wastewater treatment plant improvements and operations, stormwater management, solids handling, environmental studies, and site development. Prior to joining Cameron in 2000, Mr. Pascucci was with the Nassau County Department of Public Works for 30 years, ultimately serving as Deputy Commissioner for the Division of Sanitation and Water Supply, responsible for all wastewater, stormwater, and mosquito control activities.

Bernard E. Schmelz, AICP

Bernard Schmelz, a member of the American Institute of Certified Planners, has extensive experience in land use planning, regulatory affairs and environmental issues. Prior to joining the Department of State, Mr. Schmelz was the owner of Bernard E. Schmelz & Associates. He also worked in the public, quasi-public and private sector, including the Town of Colonie and Chesterfield County, Virginia. Mr. Schmelz received a bachelors degree in Education and Political Science from the State University of New York at Plattsburgh, and received an MS in Urban and Environmental Studies from Rensselaer Polytechnic Institute in Troy, NY. Most recently he has been assisting NY communities with the integration of SEQRA and Stormwater Management issues into governmental processes. Also, he recently authored an article entitled "Water Quality Strategies: The Land Use Option" which was published in the January issue of Water Resources Impact magazine.

Lawrence Weintraub, Esq.

Lawrence (Larry) H. Weintraub has been a Senior Attorney with the New York State Department of State since October 2000. He principally works with the Department of State's divisions of Local Government and Coastal Resources. Before joining the Department of State, Larry spent approximately 11 years in the private practice of law. During that time, Larry mostly worked in the areas of municipal, land use, environmental and real property law. For various periods, Larry served as a village and town attorney and consulted with several municipalities in the preparation and adoption of land use regulations. Larry has an undergraduate degree in geology from Harpur College at the State University of New York at Binghamton and a Juris Doctor from Antioch University School of Law. He is admitted to practice in New York and several federal courts. Larry is a member of the International Municipal Lawyers Association.

Harry Willis, Esq.

Harry Willis has been an attorney with the Department of State since 1980, specializing in municipal law and land use. He serves as the Department's Local Government Counsel, is an alternate member of the Town of Glenville Planning Board, and also has served as a member and the Village of Scotia Zoning Board of Appeals. Mr. Willis has written numerous pieces of legislation, articles and opinions, and has lectured extensively on issues of municipal and land use law. He is the co-author of the award-winning book, *The Short Course: A Basic Guide for Planning and Zoning Boards of Appeals* in New York State. Mr. Willis holds a B.A. from Union College, an M.A. from the State University at Albany, and a J.D. from Franklin Pierce Law Center.